

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

FIRST BANK & TRUST,

Plaintiff,

V.

CASE NO. 5:18-CV-234-C

**REAGOR AUTO MALL, LTD, d/b/a
REAGOR-DYKES OF LEVELLAND and
d/b/a REAGOR-DYKES IMPORTS,
FIRSTCAPITAL BANK OF TEXAS, N.A.,
BART REAGOR, RICK DYKES, SHANE
SMITH, SHEILA MILLER, BRAD D.
BURGESS, and KENNETH L. BURGESS,**

Defendants.

DEFENDANT SHANE SMITH'S MOTION TO EXTEND

TO THE HONORABLE JUDGE OF SAID COURT:

DEFENDANT, SHANE SMITH, (hereinafter “Defendant Smith”) hereby files this Motion to Extend pursuant to Federal Rule of Civil Procedure 6, and would respectfully show to the Court the following:

A. INTRODUCTION

1. On or about September 21, 2018, Plaintiff, First Bank and Trust, filed suit against Defendants in the 72nd District Court of Texas. [Doc. 1].
 2. On or about September 21, 2018, Defendant FirstCapital Bank of Texas, N.A., filed its Notice of Removal, removing the state court litigation to this Court. [Doc. 1].
 3. As of the date of the Notice of Removal, Plaintiff had not served Defendant Smith

with the pleading and summons.

4. On or about October 2, 2018, Defendant Smith was served with the Summons for this Court and a copy of the state court pleading.

5. On or about October 1, 2018, this Court ordered that Plaintiff amend its pleading by October 5, 2018, and that Defendants file their answer by October 12, 2018. [Doc. 12].

6. Defendant Smith now requests this Court extend the deadline to answer pursuant to the Federal Rules of Civil Procedure, and pursuant to this Court's discretion.

B. ARGUMENT & AUTHORITIES

7. Federal Rule of Civil Procedure 6 states that when an act may or must be done within a specified time, the court may, for good cause, extend the time, with or without motion, if the court acts, or if a request is made, before the original time or its extension expires. Fed. R. Civ. P. 6(b)(1)(A). Further, a written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, with an exception for motions that may be heard ex parte. Since this Court may, with or without motion or notice, order the time to respond extended, this Motion may be heard ex parte, and 14 days notice of hearing is not necessary. Fed. R. Civ. P. 6(b)-(c).

Good Cause

8. As stated in Rule 6(b)(1)(A), this Court may, for good cause, extend the time that an act may or must be done with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires. Fed. R. Civ. P. 6(b)(1)(A).

9. Defendant Smith would show that there is good cause to extend the deadline to answer the Plaintiff's Complaint to allow Defendant Smith thirty (30) days to respond from the date of service, thereby extending Defendant Smith's answer deadline from October 12, 2018, to

November 1, 2018. The issues in this lawsuit are sensitive, complex, and voluminous, and will require extensive review and research to address them, which cannot be completed by October 12, 2018, the deadline provided by this Court. [Doc. 12]. Defendant Smith is requesting this relief prior to the deadline to answer, and filed this Motion as soon as practicable. Defendant Smith does not seek this relief to harass or cause unnecessary delay. Defendant Smith therefore requests that this Court, for good cause, extend the deadline to November 1, 2018. Said extension is reasonable, and will not prejudice Plaintiff or the other defendants.

21-Days' Notice

10. In the alternative, Rule 81(c) of the Federal Rules of Civil Procedure provides that upon removal, defendants that have not been served in the underlying state court proceeding are entitled to the longer of: (1) 21 days after the defendant receives a copy of the state-court pleading; (2) 21 days after service of the summons for the state court pleading; or (3) 7 days after the notice of removal is filed. Fed. R. Civ. P. 81(c)(2).

11. Here, Defendant Smith did not receive a copy of the state-court pleading until he was served with the suit through this Court on October 2, 2018. The notice of removal was filed on September 21, 2018. Defendant Smith would therefore ask for the longer response period of 21-days from the date of service, making Defendant Smith's Answer due on October 23, 2018.

WHEREFORE, PREMISES CONSIDERED, Defendant Smith requests this Court grant this Motion to Extend, thereby extending Defendant Smith's deadline to answer the Plaintiff's Complaint to November 1, 2018, or the alternative, to October 23, 2018, and for such other relief, both at law and in equity, to which he may have shown himself entitled.

Respectfully submitted,

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By: /s/ Robert A. (Andy) Aycock

Robert A. (Andy) Aycock
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ATTORNEYS FOR DEFENDANT
SHANE SMITH

CERTIFICATE OF CONFERENCE

I, Joshua D. Frost, certify that on October 3, 2018, a telephone conference was held by and between the undersigned and Katy Hart with regard to whether Plaintiff's counsel opposed the relief requested in the foregoing Motion. Ms. Hart stated that they are not opposed to the relief requested in the foregoing Motion.

/s/ Joshua D. Frost
Joshua D. Frost

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the following listed party through the ECF Electronic Notification System on this 4th day of October 2018.

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